

CLERKS OFFICE U.S. DIST. COURT
AT LYNCHBURG, VA
FILED

5/19/2023

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION**

EDWARD I. WHITMORE,

Plaintiff,

v.

THE KROGER CORPORATION,

Defendant.

CASE NO. 6:23-cv-00004

MEMORANDUM OPINION
& ORDER

JUDGE NORMAN K. MOON

Plaintiff Edward Whitmore, proceeding *pro se*, filed a complaint, alleging that Defendant The Kroger Corporation's agents or employees negligently caused a heavy pallet jack to run into him while he was shopping at a Kroger store, causing him bodily injury. Dkt. 1-1 at 1. Defendant The Kroger Co. filed a motion to dismiss Plaintiff's complaint, arguing that Plaintiff is suing the wrong party. Dkt. 5. It specifically claims that the Kroger store in question was operated by Kroger Limited Partnership I and not operated by The Kroger Co. *Id.*

Taking all of Plaintiff's allegations as true and drawing all reasonable inferences in his favor, as the Court must at this stage of the litigation, Plaintiff has sufficiently alleged that The Kroger Co. owned and operated the Kroger store where his alleged injury occurred. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); Dkt. 1-1. Defendant attaches no exhibits to its motion to discount these allegations. Additionally, in response to this Court's Show Cause Order, Dkt. 12, Plaintiff explained that he named The Kroger Co., in part, because the employee who allegedly injured him said that he was employed by The Kroger Co. Dkt. 15.

Accordingly, Defendant's motion to dismiss, is **DENIED**, Dkt. 5.

It is so **ORDERED**.

The Clerk of Court is directed to mail this Order to Plaintiff and to send this Order to all counsel of record.

Entered this 19th day of May, 2023.



NORMAN K. MOON
SENIOR UNITED STATES DISTRICT JUDGE